IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

OP.No. 30403 of 2001(T)

PETITIONER:

RAJKUMAR.K., S/O.KRISHNA KUMAR,
KARUVATTIL HOUSE, PERINJANAM,
P.O.CHAKKARAPADAM, TRICHUR DIST.

BY ADV. SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENTS:

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1. THE BOARD OF DIRECTORS REP. BY ITS PRESIDENT, IRINJALAKUDA TOWN SERVICE CO-OPERATIVE BANK LTD. NO.55 (MAIN BRANCH), IRINJALAKUDA, TRICHUR DIST.

2. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, (GENERAL), MUKUNDAPURAM, IRINJALAKUDA, TRICHUR DIST.

3. TAHSILDAR(REVENUE RECOVERY), KODUNGALLUR, TRICHUR DIST.

4. VILLAGE OFFICER, PERINJANAM, TRICHUR DIST.

5. PREMKUMAR, S/O.KRISHNA KUMAR, C/O.ARCHEES BAKERY, IRINJALAKUDA (NOW EMPLOYED IN GULF).

6. ADDITIONAL SALES TAX OFFICER, CHAVAKKADU, TRICHUR DIST.

R2 TO 4 &6 BY G.P. SRI.SREEKRISHNA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/09/2007, ALONG WITH WPC NOS. 20459 & 890 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.49403/2001 & UNNUMBERED I.A. OF 2006 IN CMP NO.49403/2001:

DISMISSED:

19.9.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE CONFIRMATION OF AUCTION SALE DT.11.7.2001 ISSUED BY R2.

P2: TRUE COPY OF REGISTERED SALE DEED EXECUTED IN THE NAME OF PETITIONER BY R2 DT.1.8.2001.

P3: TRUE COPY OF APPLICATION DT.23.8.2001 SUBMITTED BEFORE R4.

P3(a): TRUE COPY OF ENDORSEMENT MADE IN EXT.P3.

P4(a): TRUE COPY OF R.R. NOTICE ISSUED TO R5 BY R6.

P4(b): .DO. ISSUED BY R6.

P4(c): .DO. .DO. DT.29.5.2001.

P5: TRUE COPY OF ORDER ISSUED BY R3 DT.5.9.2001.

ANNEXURE I: TRUE COPY OF ORDER DT.24.11.2005 IN CMP 49403/01 IN O.P. 30403/01 OF THIS HON'BLE COURT.

ANNEXURE II: TRUE COPY OF JUDGMENT DT.24.5.2006 IN WPC NO.18583/05 K OF THIS HON'BLE COURT.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.30403 of 2001 and
W.P.(C) Nos.890 & 20459 of 2007

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Dated this the 19th day of September, 2007.

JUDGMENT

Since the issues raised are same, these writ petitions are heard together and disposed of by this common judgment. The 5th respondent in O.P. 30403/2001 was a debtor to the first respondent-Bank and was also in arrears of sales tax. The share of property obtained by 5th respondent from the family was auctioned in recovery proceedings for recovery of arrears due to the Bank. The petitioner in O.P. 30403/2001 who is the brother of the defaulter purchased the property in auction for Rs.2,54,000/-. The purchase price was sufficient to take care of the balance Bank debt. The sale took place in the year 2001 and the property was delivered to the petitioner therein. Later the property was again sold on 9.3.2007 for arrears of sales tax due from the original owner of the property. The property was purchased for Rs.6,07,000/- by the petitioner in W.P. 20459/2007. Another bidder of the property who is petitioner in W.P. 890/2007 offered a higher price of above Rs.7 lakhs. While the petitioner in W.P. 20459/2007 prays for confirmation of sale in his favour, the petitioner in W.P. 890/2007 is challenging the sale at a price lesser than the amount

offered by him. Since the petitioner in O.P. 30403/2001 has offered to settle the arrears of sales tax due in respect of the property and since the property is the family property of the defaulter and the person who purchased is none other than the brother of the defaulter and since sale is not confirmed, I feel recovery proceedings later initiated for recovery of arrears of sales tax due from the defaulter which led to the sale can be interfered with on condition of petitioner in O.P. 30403/2001 clearing the arrears of tax and on compensating the petitioner in W.P.20459/2007 with reasonable rate of interest. In the circumstances, all the writ petitions are disposed of with the following directions. There will be direction to the petitioner in O.P. 30403/2001 to remit Rs.3,64,797/- which is the arrears of tax, penalty and interest due from the defaulter as on 14.9.2007, within six weeks from today. This will be adjusted against tax arrears and the Tahsildar will close the revenue recovery proceedings against the defaulter pertaining to arrears of sales tax. Along with this, petitioner in O.P. 30403/2001 will pay interest at one and a half per cent per month on the purchase price paid by the petitioner in W.P. 20459/2007 from date of deposit of purchase price till date of payment of interest by the said petitioner. The Tahsildar will work out interest from date of remittance by the purchaser for the petitioner in O.P. 30403/2001 to deposit interest

amount. If payments are made within six weeks from now as above by the petitioner in O.P. 30403/2001, the Tahsildar will refund the purchase price together with interest deposited by the said petitioner to the petitioner in W.P. 20459/2007 without making any recoveries or adjustments. Since sale is set aside and liability is settled as above, there will be direction to the Tahsildar not to recover any collection charges in the matter.

Since the sale is cancelled and the property is allowed to be retained by the petitioner in O.P. 30403/2001, there will be direction to the Tahsildar to grant refund of the advance amount deposited by the petitioner in W.P. 890/2007 without any recoveries within a week from the date of production of copy of this judgment by him.

C.N.RAMACHANDRAN NAIR
Judge

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